IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.No.10420 of 2003

S.V.Shankar .. Petitioner

versus

1. The Settlement Commission (IT & WT)
   Additional Bench
   88-489, Anna Salai
   Chennai-600 035.

2. The Assistant Commissioner Income-Tax
   Range IX, Shaffie Mohd. Road
   Chennai-600 006. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records relating to the petitioner on the file of the respondent herein and to quash the impugned order passed by the Settlement Commission in Application No.21/V/171/94-IT dated 5.8.2002 and consequently direct the respondents to rehear the case after considering the evidence on record.

For petitioner : Mr.N.Devanathan

For respondents : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

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ORDER

(Order of the Court was made by **CHITRA VENKATARAMAN,J.**)

The petitioner seeks the issue of a Certiorarified Mandamus to quash the order dated 5.8.2002 passed by the first respondent herein, namely, the Settlement Commission, and to direct the first respondent to rehear the case after considering the evidence and materials.

2. The petitioner herein filed an Income Tax Settlement Application for settlement of his liability relating to the assessment years 1988-89 to 1994-95. By order dated 5.9.2002, the first respondent passed an order and determined the estimated income. The Commission noted that the basic problem in the case was in estimating the net profit income. Since the seized documents did not relate to all the years for consideration, the Commission adopted an average of two rates of profit as disclosed in the seized records of Lakshmi Agency and Kumaran Agency. It fixed the percentage at 0.75%, of the turnover relating to the assessment years 1990-91 to 1993-94 and allocated to different Assessment Years from 1991-92 to 1994-95 in proportion to the yearly turnover. The writ petitioner has challenged this order on the ground that the Settlement Commission had failed to determine the income on the basis of the material evidence in comparable cases and hence, the determination was thus incorrect, high pitched and without any basis.

3. Heard counsel for both sides.

4. A perusal of the order of the first respondent shows that there was a search in the petitioner's business premises on 5.8.1992. The petitioner was engaged in the business of selling lottery tickets as a sole selling agent. It had lottery business in Bangalore in the names of Priya Agency and Sri Sairam Agency. The Settlement Commission noted that the books of accounts were not audited. The Settlement Commission pointed out that basic problem in the case was the issue of estimating the net profit since the seized documents did not relate to all the years under consideration. The first respondent also pointed out that the petitioner had not been maintaining the regular accounts, worsened by the fact that the petitioner had alleged non-cooperation by erstwhile partners. The Department had taken only the receipts side of the seized accounts and not the losses which were reflected in the said seized accounts. To use the words of the Settlement Commission, "Faced with these mutually irreconcilable provisions, the only way to settle the case would be to estimate the net profit. The only figure on which both the Department and applicant have agreed is in respect of the turnover of the applicant." In the above circumstances, the Settlement Commission took the net profit at 0.75% of the turnover and determined the income. In the light of what has been stated by the first respondent, we do not find any merit in the contention of the petitioner herein that the Settlement Commission's order is

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incorrect.

5. It may be noted that the jurisdiction of this Court under Article 226 of the Constitution of India is not that of the appellate Court. The provision for settlement under Chapter XIX-A is in the nature of a statutory arbitration to which a person may submit himself voluntarily. Hence, the power to review that may be exercised under Article 226 of the Constitution of India could only be in cases where there are mistakes apparent on the face of the record, but may not be exercised on the ground that the decision is erroneous on merits. The decision of the Supreme Court reported in 201 ITR 611 (JYOTENDRA SINHJI Vs. S.I.TRIPATHI) and 223 ITR 840 (KULDEEP INDUSTRIAL CORPORATION Vs. ITO) clearly lays down the parameters of the scope of the enquiry by the High Court under Article 226 or by the Supreme Court under Article 136 of the Constitution of India. In the circumstances, where the Commission has, on the basis of materials on record, come to a decision, it would not be open to the High Court to substitute its view on the materials disclosed in preference to that of the Settlement Commission. In 204 ITR 616 (SHRIYANS PRASAD JAIN Vs. ITO), the Apex Court held that the Court could not go into the questions of fact recorded by the Commission.

Considering the limited jurisdiction and the fact that after due appreciation of the facts, the Settlement Commission had arrived at its finding, we do not find any merit to accept the plea of the petitioner herein. Consequently, the writ petition stands dismissed. There will be no order as to costs.

Ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

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   Additional Bench
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   Chennai-600 035.

2. The Assistant Commissioner Income-Tax
   Range IX, Shaffie Mohd. Road
   Chennai-600 006.

+ one cc to Mr. N. Devanathan, Advocate sr no. 11801
+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 12025

DB(CO)
NM(26.03.07)

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